

May 31, 2005

David Bauer  
400 Capitol Mall, Suite 1560  
Sacramento, CA 95814

**Re: Your Request for Advice**  
**Our File No. A-04-267**

Dear Mr. Bauer:

This letter is in response to your request on behalf of McClintock for Senate and McClintock for Lt. Governor for advice regarding the campaign provisions of the Political Reform Act (the 'Act').<sup>1</sup>

### **QUESTION**

If Senator McClintock is unsuccessful in his 2006 Lieutenant Governor campaign, may he transfer uncommitted funds back into his current 2004 Senate committee account for officeholder expenses over the remainder of his term?

### **CONCLUSION**

The funds could only be transferred back if the 2004 Senate committee had net debt outstanding.

### **FACTS**

Tom McClintock was re-elected to the state Senate in 2004. There remains in his controlled committee, McClintock for Senate, a significant, uncommitted bank balance. His intention is to transfer some portion of that balance into the McClintock for Lt. Governor committee to be used in the 2006 campaign for that office, attributing the transfer using the last in method. If his campaign for Lt. Governor is unsuccessful, you ask whether he can transfer any uncommitted funds from the Lt. Governor committee back to the Senate committee to use for officeholder expenses over the remainder of his

---

<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

Senate term. Such a transfer, if permissible, would likely be attributed using the “last in” method.

### ANALYSIS

Section 85306 generally allows a candidate to transfer campaign funds from one controlled committee to a controlled committee for elective office of the same candidate. (§85306, subd. (a).) Such a transfer must attribute contributions to specific contributors using a “last in, first out” (“LIFO”) or “first in, first out” (“FIFO”) accounting method. For instance, using the LIFO method, the first dollar transferred is attributed to the most recent contributor to the transferring committee.<sup>2</sup>

Another section in the Act, however, limits fundraising activities of campaign committees under certain circumstances. Section 85316 prohibits a committee from accepting contributions after an election unless the committee has debt:

“A contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.”

Turning to your question, we see that the first transfer, from the senator’s ’04 committee to the ’06 committee is permitted by section 85306. Because the ’06 election has not yet occurred, the receipt by the ’06 committee of campaign funds does not implicate the prohibition of section 85316.

The more difficult question arises in determining whether the law allows a candidate to transfer funds back to the original committee – in this case, the senator’s ’04 Senate committee. While transfers among a single candidate’s committees are generally allowed under 85306, restrictions on transfers are permissible where they protect the integrity of contribution limit schemes, such as section 85316. (*See SEIU v. FPCC* (9<sup>th</sup> Cir. 1992) 955 F.2d 1312.) For instance, one could not legally raise money into a future office campaign account and then transfer it to an open debt-free committee for a past election, for this would circumvent the post election fundraising prohibition of section 85316. The question, then, becomes whether transferring money back into the ’04 account from the ’06 account runs afoul of section 85316.

While we have advised in the past that under certain circumstances transfers among a candidate’s own controlled committees are not ‘contributions,’ (*see Reno* Advice Letter, No. A-00-038; *McPherson* Advice Letter, No. A-04-008; *but see Copp* Advice Letter, No. I-04-105), we have never given such advice in the context of a post-34 transfer of funds to post-34 committees that are subject to contribution limits. In the

---

<sup>2</sup> The amount actually attributed to the individual contributor is limited in either of two ways: either by the actual amount the individual contributor gave to the transferring committee, or the applicable contribution limit on the committee receiving the transfer, whichever is lower.

*Reno* advice letter, written prior to Proposition 34, we advised that transfers among a senator's committees did not trigger pre-election statements required by section 84200.5 (so long as the none of the committees made contributions or independent expenditures to support or oppose other candidates or committees within that period). In the *McPherson* advice letter, we advised a candidate that transfers among pre-34 committees *prior* to the effective date of regulation 18531.61 (which applies section 85316 to pre-34 committees) did not constitute contributions subject to the net debt fundraising limitations. In the *Copp* letter, however, we advised that an assembly officeholder with outstanding debt from previous elections could transfer money from an incumbent office account to pay debts. In the letter we advised that section 85316 limited fundraising into those committees to the amount of outstanding net debt.

Thus, prior to the passage of Proposition 34, we advised that intra-candidate transfers were not considered contributions for purposes of triggering pre-election or late contribution reports under Chapter 4 of the Act. However, under section 85306, contributions transferred from one of a candidate's controlled committees to another are counted for purposes of contribution limits. We conclude, consistent with the *Copp* letter, that section 85316 applies to transfers among a candidate's own controlled committees, such that the transfers are counted as contributions for purposes of Article 3's contribution limits. This interpretation is bolstered by the fact that section 85316 would be rendered meaningless were we to allow candidates to open committees for other offices and transfer contributions to those committees to a debt-free committee established for a past election.

Therefore, once the senator transfers funds to the '06 Lieutenant Governor committee, the funds may not be transferred back into the '04 committee, as that committee does not have net debt as defined by regulation 18531.61.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: C. Scott Tocher  
Senior Commission Counsel  
Legal Division

CST:rd  
I:\AdviceLtrs\04-267